

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67723 of 2024

Arising Out of PS. Case No.-466 Year-2022 Thana- SAMASTIPUR MUFFASIL District-
Samastipur

Om Prakash Pandey Son of Late Shambhu Pandey R/o Village- Malpur Chak
Haji, P.S.- Karpoorigram, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mahendra Pratap, Advocate
For the Opposite Party/s : Mr.Anil Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 03-10-2024 Heard Mr.Mahendra Pratap, learned counsel for the
petitioner and Mr.Anil Kumar, learned Additional Public
Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Muffasil P.S.Case No.466 of 2022, FIR dated
17.10.2022 registered for the offences punishable under Section
30(a) of Bihar Prohibition and Excise (Amendment)Act.

3. Recovery is of 180 Ml of foreign liquor.

4. Learned counsel for the petitioner submits that the
petitioner has clean antecedent. He has falsely been implicated
in the present case. Petitioner is not named in the FIR and the
name of the petitioner has been transpired during investigation
on the basis that the petitioner is owner of the vehicle in



question. From a bare perusal of the FIR it appears that nothing has been recovered from conscious possession of the petitioner rather the recovery has been made from the Alto Car bearing Registration No.BR 06CT 0840 and the petitioner has been made accused in the present case merely on the ground that the petitioner is owner of the vehicle in question and in fact the petitioner has given the Car in question to his son-in-law and son-in-law has used the vehicle in question and he has been made accused in the case merely on the ground that the name of the petitioner is mentioned in the ownership of the vehicle in question. There is non-compliance with mandatory procedure prescribed for recovery under Section 100 of Cr.P.C. No case, whatsoever, would be made out against the petitioner under the Bihar Prohibition and Excise Act.

5. Learned A.P.P. for the State has vehemently opposed the prayer for bail of the petitioner referring the provision contained in Section 76(2) of the Bihar Prohibition and Excise Act and submitted that the pre-arrest bail would not be maintainable.

6. This Court is aware of the decision of the Full Bench in the case of **Ram Vinay Yadav Vs. State of Bihar** reported in **2019 (2) PLJR 1089**. Having regard to the law laid



down in the aforesaid judgment and the submission advanced on behalf of the parties, this Court for the limited purpose of grant of anticipatory bail, is inclined to accept the submission of Counsel for the petitioner.

7. Considering the aforesaid facts, petitioner has clean antecedent, nothing has been recovered from conscious possession of the petitioner, let the petitioner, above named, in the event of his arrest or surrender before the court below within a period of thirty days from the date of receipt of the order, be released on bail on furnishing bail bond of Rs.10,000 (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge Excise-I, Samastipur in connection with Muffasil P.S.Case No.466 of 2022, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

(I) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on his/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be cancelled by the Court below.

(II) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move



for cancellation of bail.

(III) And, further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage, it is found that the petitioner has concealed his/her criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajesh Kumar Verma, J)

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